

## THE LEGAL ISSUES OF ARCTIC EXPLORATION

*Sergey M. Smirnov, Anton V. Kostyuk*

*This article focuses on the legal aspects of maritime delimitation in the Arctic and the regulation of navigation in the Northern Sea Route. Also the historical aspect of the research questions is touched upon. The author also examines the sectoral principle of the responsibility delimitation in the region between the Arctic states. Particular attention is paid to the system of the Russian legislation in this region: current status and trends in changes. The main conclusion is the necessity to form a new (modern) system of national legal regulation of shipping along the NSR, in particular the establishing of new environmental regulations and standards.*

**Keywords:** The Arctic, Northern Sea Route, International Law, national legislation, maritime borders delimitation.

Global climate changes have a provoking effect on Arctic natural, political and economic environment. The melting of polar ice is seemingly opening the way to Arctic treasures, oil and gas first of all. At the same time commercial navigation via the Northern Sea Route (NSR) and North Western Passage (NWP) will supposedly become a reality in the near future. These two factors combined explain (and justify to some degree) the restless desire of many governments, of both Arctic and non-Arctic states, as well as of non-government actors, to take part in the Great Arctic race.

At the same time the issues of Arctic Ocean and its adjacent continental shelf delimitation remain unsettled to a large degree. Legal situation in the Arctic is possibly the most complicated today. The reasons date back to early XIX century when in actu situ approach was common in

legal relations between Russian and British Empires – the only Arctic actors of the time. Moreover, the remoteness of Arctic, animosity of its terrain and climate to humans and an obvious lack of strategic value facilitated a peripheral nature of the Arctic border delimitation process.

The situation has changed dramatically in the XX century. Russian /Soviet leaders were probably among the first who anticipated the strategic significance of NSR – a shortest way between Atlantic and Pacific. Operations of Nazi cruisers in the Polar Ocean and the lend lease air bridge connecting Alaska and European Russia in the days of WWII confirmed the importance of the Extreme North. The superpowers' confrontation during the Cold War has justified the strategic value of ice covered and desolates Arctic region. Worth noting was the absence of any attempts to challenge the existing legal status there.

The end of the Cold War and the progress of globalization in various spheres including maritime law surprisingly resulted in the complication of legal problems in the North. Politicians, lawyers and scholars discuss the legal issues of Arctic aqua spaces delimitation, of establishing the regulating mechanisms for Arctic economic exploration and ship navigation at various forums – with no clear and universally accepted results so far. Contradicting political and economic interests resulted in tangled legal situation in case of the Arctic. We will try to clarify it to some degree dealing predominantly with legal arguments and addressing political and economic aspects in extremis.

One of the most principal issues is how to calculate the outer borders of EEZ and continental shelf in the Arctic. EEZ is seemingly easier as its boundaries are defined by UNCLOS 1982. Unfortunately, only seven out of eight members of the Arctic Council have ratified UNCLOS 1982 so far. USA has not agreed to abide to its terms and, being a superpower theoretically speaking may claim for extended EEZ with outer borders well above the standard 200 nautical miles from the coastline.

But there is no common position on continental shelf neither among legislators nor sovereign states. As stated in UNCLOS 1982 Article 76, “The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from

the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.” Accordingly, in the worst case for the coastal state, the boundary of the continental shelf will be the same as EEZ limits. If the outer border of the continental seabed margin extends beyond 200 miles, the boundaries of the shelf may be determined in different ways:

1. Not exceeding 350 miles from the baselines;
2. Within 100 miles from the 2,500 meter isobath.

In this case, the coastal State shall submit information on the outer border of its continental shelf beyond the 200 miles limit to the Commission on the Limits of the Continental Shelf. However, this does not guarantee the establishment of such extended boundaries as indicated in the application.

We believe the conditions on continental shelf boundaries regulation as specified in UNCLOS do not fully adhere to the unique situation existed in the Arctic due to a number of geographic and historical reasons.

An alternative “option of responsibility” in the Arctic is the so-called sector principle, based on inherent division of the region into several parts, the legal regulation in each is provided by the coastal states – Russia, Canada, US, Norway and Denmark. It should be noted that the international legal framework for this principle of regulation does not exist. Each of the Arctic states applies domestic law in its area of responsibility. The first to go down this path were Canadians by setting the boundaries of the sector in 1907-1925. Next year Russia (then USSR) did the same. So far none of the other nations challenged such decisions, which led to the emergence of an international legal custom.

Also noteworthy is UNCLOS 1982 Article 238 providing the opportunity to establish a special environmental legislation for offshore territories within EEZ which are covered by ice most of the year. The Arctic states have already used this option. In particular, Canada by domestic regulatory act has established specific requirements for the environmental status of marine vessels navigating in its EEZ. Similar decisions can be expected from other countries, which principally can be justified.

As a result of our study of the international legal framework governing the Arctic region we conclude that the existing norms and

rules are insufficient to remove all contentious issues. A complete and comprehensive set of regulations that would cover all possible areas of interaction between states does not exist, which in fact ultimately leads to disputes and ambiguous situations.

As for the Russian legislation it should be noted that not all possible regulatory issues have been covered so far. And yet, quite a lot has been achieved recently.

Currently, a document called “The Principles of State Policy of the Russian Federation in the Arctic for the period of 2020 and beyond” (approved by the President of the Russian Federation September 18, 2008, Directive N-1969) provides a basis for this area. It confirms the applicability of sector principle in the Arctic region. However, this document does not establish clear rights and obligations for the parties involved, which may arise in the implementation of activities in the region. It only defines Russian national interests in the region, the goals and objectives for the near term, as well as general principles of foreign and domestic policy to be followed in the future.

At the same time, being a member state of UNCLOS 1982 Russia cannot refuse to comply with its requirements. Therefore, the outer limits of all sea areas under national jurisdiction have been established in compliance with UNCLOS 1982 terms as mentioned earlier. Thus, Federal Law of 31.07.1998 № 155-FZ “On the internal waters, territorial sea and contiguous zone of the Russian Federation”, the Federal Law of 17.12.1998 № 191-FZ “On the exclusive economic zone of the Russian Federation” and the Federal Law of 30.11.1995 № 187-FZ “On the continental shelf of the Russian Federation.” were issued.

On January 28, 2013 the Federal Law № 132 “On state regulation of commercial navigation along the Northern Sea Route” came into force. This law has also adopted new “Rules of Navigation Along the Northern Sea Route”. In late March 2013 the Administration of the Northern Sea Route (NSR), recreated after the nearly 20-year hiatus has started operations in Moscow. This structure will coordinate matters related to the organization and the safety of navigation along the NSR, including the issues of icebreaking, hydrographic and meteorological support.

The new legislation provides a definition of what constitutes the “waters of the NSR”. This requires a detailed explanation.

Back in the USSR period the notion of the NSR included only sea lines of communications extending mainly along the Arctic coast and passing through selected straits. Today the geographical boundaries of the area have significantly expanded. Accordingly, not only the territorial waters and the contiguous zone but also the vast areas of Russian EEZ Federation from the coast of Novaya Zemlya on the West to Cape Dezhneva on the East fall under the jurisdiction of NSR Administration. This was done because the very nature of shipping in the Frozen Ocean has changed. New very large ships with displacement of 100.000+ tons carrying gas, ore concentrate or containers have started transit operations here. Older NSR routes are unsuitable for them because of shallow waters and complexity of navigation in the straits.

An obvious interest of the international shipping community in opening commercial navigation along the NSR permits Russia, because of its geographical position, to establish a set of regulations beneficial for both the coastal State and the ship owners, and still remain within the existing international law. The innovations in the environmental legislation that establish standards and requirements for vessels passing through the Arctic sector of the Russian exclusive economic zone might become an example of such new regulations. Establishing a mandatory icebreaking escort in the periods when unescorted shipping can threaten the ships, their crew and transported goods may become another effective measure serving the interests of all sides. Introducing special insurance rates for the Arctic transit shipping is also worth consideration.

And, in any case the terms and conditions of new legislative and administrative measures should not be overburdening for the shipping companies and cargo owners. But, we have no right to forget that the protection of fragile Arctic environment is our common utmost responsibility.

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